IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No. 529 of 2000.
Judgment reserved on 19.9.1997.
Date of decision: September 24th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Kartar Chand. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?No.

For the Appellant: Mr.V.K. Verma,Addl. Advocate General.

For the respondent: Mr. J.L.Bhardwaj, Advocate.

Surinder Singh, J (oral):

The respondent Kartar Chand was tried and acquitted for the offence under Sections 451, 504, 509, 506, 354 and 500 of the Indian Penal Code, against which the instant appeal has been filed by the State, on the ground that the learned trial court had set an unrealistic standard to appreciate the prosecution evidence on record since the reasoning given is manifestly unreasonable and the impugned judgment of acquittal can be converted into conviction.

I have heard the learned counsel for the parties and have minutely and legally scanned the evidence on record.

Precisely, the prosecution case is that Smt. Kailasho Devi (PW1) was filling water on a public tap with her Jethani Smt. Vidya Devi (PW2). In the meantime, the respondent came there and

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

started abusing her and alleged that he had seen her in the compromising position of one Shri Balo, thereafter, the respondent pushed her down, put off his underwear and told her to have the sex with him and threatened her to strip off her clothes wherever she would meet him. The complainant made a complaint Ext PW1/A to the Panchayat and then to the police. She has also alleged that on 28th of July, 1998, the respondent knocked her door during night and started using filthy language. On this, PW2 Vidya Devi and her husband Hari Chand came out and the respondent fled away.

The police registered a case vide FIR Ext.PW4/B and commenced the investigation. They prepared the site plan Ext.PW4/A and recorded the statements of the witnesses and thereafter presented the challan in the court for trial.

The prosecution examined PW1 complainant, PW2 Vidya Devi and PW3 Hari Chand, the husband of PW2 and the Investigating Officer. In cross-examination, the complainant has admitted that there had been a boundary dispute with the respondent since long and they are not in speaking terms with each other. Their relationship is strained and that when the accused had met her near the tap, his mother and wife were also with him and she was pushed in their presence. Even she further disclosed that at that time about 20 persons were present on the spot, but out of them, none has been examined. This version beats the imagination of any one on this earth that any sane person in the presence of his mother and wife would put off his underwear and use the filthy language to a woman, push a lady her down to invite her to have a sexual intercourse. The story put-forth by the complainant is highly improbable. Even PW2 Vidya Devi who is stated to have been with the complainant, did not say so, but only deposed that the

respondent met them near the tap and thereafter he started abusing PW1 but thereafter she introduced an altogether new story that the respondent had chased the complainant to her house and then put off his underwear. She has also admitted the presence of wife of the respondent and his mother and also that about 18 persons were present on the spot. Hari Chand, husband of PW-2, as PW3, has given another story that he had seen the respondent near the tap from his house. The complainant was pushed down by him and he also knocked the door of the complainant. He simply put off his underwear and caught hold of her from the breast and abused her, which fact was not even stated by the complainant either in her complaint or in the court. Neither the police nor the prosecution recorded and examined the witnesses of the village, who were stated to be present there in good number.

Even no member of the Panchayat to whom she is alleged to have complained, was either cited as witness or examined to prove the version of the complainant. The material and independent witnesses were withheld. Further the complainant has alleged two incidents, first on 26th July, 1998 and second on 28th July, 1998. Neither PW2 nor PW3 who were stated to have arrived during the second incident have stated anything about the said occurrence. Regarding the incident which allegedly took place on 26th of July, 1998, there are conflicting versions. Thus, the case of the prosecution is full of infirmities, contradictions and embellishment. Therefore, the prosecution could not prove it beyond a shadow of reasonable doubt. The learned trial court had taken note of it and rightly passed the judgment of acquittal and I also concur with it. Thus, the appeal merits dismissal, which is accordingly dismissed.

The respondents are discharged of their bail bonds, entered upon by them, at any time, during the proceeding of this case.

September 24th, 2007. **(Surinder Singh)**
(PDS) **Judge**.